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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,452	11/08/2001	Yehuda HersHKovits	P-3864-US	5080

27130 7590 05/10/2006

EITAN, PEARL, LATZER & COHEN ZEDEK LLP  
10 ROCKEFELLER PLAZA, SUITE 1001  
NEW YORK, NY 10020

EXAMINER
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SWERDLOW, DANIEL

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

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**Failure to Acceptably Respond to  
Notice of Non-Compliant Amendment (37 CFR 1.121)  
No New Time Period for Reply is Provided**

The amendment document filed on 01/05/2006 fails to provide the corrective action required by the prior Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 12/05/2005. The amendment, including both the originally filed amendment and the amendment filed in response to the prior notice, is still considered to be non-compliant under 37 CFR 1.121. In order for the amendment document to be compliant, correction of the item(s) listed below is required. **Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted.** 37 CFR 1.121(h).

The period for reply continues to run from the mailing date of the prior Notice of Non-Compliant Amendment. The corrections listed below must be timely filed to avoid abandonment of the application. No new time period for reply is provided in this communication. See the Manual of Patent Examining Procedure (MPEP) § 714.03.

If the period for reply set forth in the prior Notice of Non-Compliant Amendment has expired, this application will become abandoned unless applicant: (1) corrects the deficiency, and (2) obtains an extension of time under 37 CFR 1.136(a). In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the prior Notice of Non-Compliant Amendment (37 CFR 1.121).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_
- ☐ 3. Amendments to the drawings: \_\_\_\_\_
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: Marked up Claim 33 has bracketed text that was not in prior version and grayed-over text.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/procnotice/officeflyer.pdf>.

Supervisory Legal Instruments Examiner (SLIE)

571-272-7282  
Telephone No.

## **Carmichael, Shirell**

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**From:** Spears, Kimberly  
**Sent:** Thursday, April 20, 2006 2:18 PM  
**To:** Swerdlow, Daniel; Tran, Sinh; Carmichael, Shirell  
**Subject:** RE: 09/986,452 failure to acceptably respond to notice of non-compliant amendment

Shirell,  
Please prepare the notice for the file listed below for me to sign.

*Kimberly D. Spears*  
*SLIE TC 2600 Units 2614,2615,2617 & 2618*  
*Knox 6 B 49*  
*571-272-7282*

*If GOD brings you to it he will bring you through it!!!*

-----Original Message-----

**From:** Swerdlow, Daniel  
**Sent:** Tuesday, April 11, 2006 9:58 AM  
**To:** Tran, Sinh  
**Cc:** Spears, Kimberly  
**Subject:** RE: 09/986,452 failure to acceptably respond to notice of non-compliant amendment

The notice sent on 05 December 2005 was actually the second consecutive Notice of Noncompliant Amendment in this case. The previous one was sent on 26 September. I'm sorry I didn't make that clear earlier.

Based on Dwayne's email about this same case from 30 January (see below) I think the "Failure to Acceptably Respond" is the correct response in this situation.

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-----Original Message-----

**From:** Bost, Dwayne  
**Sent:** Monday, January 30, 2006 6:57 AM  
**To:** Tran, Sinh  
**Subject:** RE: 09/986,452-status-ABN or not?

Let me see if I can get the facts/sequence correct:

- Office mails a non-final Office action on 4-4-05
- Applicant responds within the time period + an extension of time, on 7-14-05.
- The Office mails a Notice of non-compliant amendment (with possibilities of extension of time) on 9-26-05.
- Applicant responds to the Notice w/in the 1 month provided by the Notice on 10-16-05 (the only deficiency that I see is that they did not provide a complete listing of claims.
- The Office mails another Notice of non-compliant amendment (with possibilities of extension of time) on 12-5-05.
- Applicant has responded within the 1 month period provided by the Notice of Non-Compliance on 1/5/06.

If this is accurate, then it would appear to me that the applicant has complied with every time period set. If applicant's amendment still isn't correct, then it is **improper** to send out yet another, new, Notice of Non-Compliance, giving them a "fresh" 30 day period in which to

attempt a proper reply!!!!!! Tech Support ought to mail out a different form titled : "Failure to Acceptably Respond to Notice of Non-Compliant Amendment (37 CFR 1.121) **No New Time Period for Reply is Provided**. Keep in mind that applicant can still pay for extensions of time from the last Notice - up to 6 months.

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Daniel Swerdlow  
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AU 2615  
United States Patent and Trademark Office  
Knox Building, Room 6A89  
Phone 571-272-7531  
Fax 571-273-7531  
Email daniel.swerdlow@uspto.gov

-----Original Message-----

**From:** Tran, Sinh  
**Sent:** Friday, April 07, 2006 5:13 PM  
**To:** Swerdlow, Daniel  
**Cc:** Spears, Kimberly  
**Subject:** RE: 09/986,452 failure to acceptably respond to notice of non-compliant amendment

Dan,

I believe you should send out another non-compliance and specifically point out what need to be fixed so that the applicant may get it right on the next filing. Thanks, sinh

-----Original Message-----

**From:** Swerdlow, Daniel  
**Sent:** Friday, April 07, 2006 2:50 PM  
**To:** Spears, Kimberly  
**Cc:** Tran, Sinh  
**Subject:** 09/986,452 failure to acceptably respond to notice of non-compliant amendment

Back on 05 December 2005 we sent a Notice of Noncompliant Amendment for 09/986,452. On 05 January 2006 for 09/986,452 they filed an amendment, but it is still noncompliant. The marked up text for Claim 33 has bracketed text that was not in the prior version of the claim and greyed-out text.

I think we need to send to send them a notice of failure to acceptably respond to notice of non-compliant amendment.

Please let me know if there's anything I need to do. Thanks.

Daniel Swerdlow  
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